

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015020856

ORDER PARTIALLY GRANTING
REQUEST FOR CONTINUANCE AND
SETTING PREHEARING
CONFERENCE AND HEARING
DATES

This matter has been pending since February 18, 2015. The parties first asked for, and were granted, a continuance after an unsuccessful mediation on March 25, 2015. At that time, the parties requested and were granted hearing dates of April 29 and 30, 2015. At the Prehearing conference on April 17, 2015, both parties asked for and were granted continuances for good cause. Both parties asked that the matter be continued to September 2015 and that request was denied. The matter was set to begin on June 15, 2015.

On May 28, 2015, Sequoia made another motion to continue the case, general citing the unavailability of District witnesses during summer break and the planned vacation of the special education director for Sequoia beginning June 22, 2015. Student did not oppose this motion and the parties again asked for September 2015 hearing dates. This was considered both a motion for reconsideration and a motion to continue. At this time, Student only raised a conflict for Student and Parent based upon travel plans on or about September 47, 2015.

On May 29, 2015, the motion to reconsider was granted and the hearing was continued based upon the good cause shown of the special education directors planned vacation. The order specifically held that the general claim of summer break was not good cause for a continuance and that the matter would not be continued to September. The hearing was set for July 7-9, 2015 and July 14-15, 2015.

On June 3, 2015, Student filed yet another a request to continue the dates in this matter based upon the unavailability of Student and her parents the week of July 7, 2015 and because "many of Student's witnesses are not available during July or August due to carting vacation schedules." The attached declaration merely repeated these general statements and had no specifics included regarding the alleged vacations of many of Student's witnesses. Sequoia did not oppose the motion. Both parties have asked again that the hearing be set to begin on September 21, 2015 and estimate a six day hearing.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has already issued two orders denying the parties request to continue this hearing until September 2015. Student's declaration in this motion included information that Parent will be out of the area during the entire month of August until September 4, 2015, for a work assignment, and also that Student and Parents have a pre-paid family vacation the week of July 7, 2015. There are also non-specific claims that many Student witnesses have vacation plans in July and August. Good cause has been established for not holding the hearing the week of July 7, 2015 and from August 1, 2015 through September 4, 2015. Good cause has not been found for any other dates in July. The parties chose the hearing dates assigned after the first request for continuance of April 29 and 30, 2015. This hearing has already been set for hearing on **five** different dates. With this continuance, it will be six. The parties have not established, with proper specificity and declarative support, good cause for this matter to be continued past July 2015. The parties have available to them the power of the subpoena to compel the attendance of their respective witnesses.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Partially Granted. All dates are vacated. This matter will be set as follows:

Prehearing Conference: June 29, 2015, at 1:00 p.m.

Due Process Hearing: July 13, 2015, at 1:30 p.m., July 14-16, 2015 at 9:00 a.m., July 20, 2015 at 1:30 p.m., July 21-22, 2015 at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: June 10, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings